IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI, NORTHERN DIVISION

GLORIA J. JENKINS
SHELIA R. HOLMES **PLAINTIFFS**

V. **CIVIL ACTION NO.: 3:17-CV-75-CWR-FKB**

DITECH FINANCIAL, LLC,
ROBINSON & HOLMES, PLLC,
et al **DEFENDANTS**

BANK OF NEW YORK MELLON'S MOTION TO DISMISS

Defendant Bank of New York Mellon ("BONY") is entitled to dismissal with prejudice of the Complaint filed against it by Plaintiffs Gloria J. Jenkins ("Jenkins") and Shelia R. Holmes ("Holmes") (collectively "Plaintiffs"), pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(4), 12(b)(5), and 12(b)(6) as set forth below:

1. The Plaintiffs initiated this lawsuit on May 25, 2016 by filing a Complaint against Ditech Financial, LLC and Robinson & Holmes PLLC in Rankin County Chancer Court. Plaintiff Holmes thereafter filed a series of affidavits in December 2016 and January 2017. The last affidavit included BONY as a "defendant" in the caption of the case. There was thereafter no mention of BONY in the affidavit. No summons was issued as to BONY at any time by the Chancery Clerk. A federal form proof of service was filed by Plaintiff on January 4, 2017 purporting to evidence service on BONY, via certified mail, to Bank of New York Mellon 225 Liberty Street, New York, NY 10286.

2. This matter was removed to this Court on February 3, 2017 by the United States Equal Employment Opportunity Commission ("EEOC").

3. BONY is entitled to dismissal of this matter in its entirety, with prejudice.

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4. First, the Court lacks personal jurisdiction over BONY in this matter. Plaintiffs assert no factual allegations whatsoever against BONY to permit the exercise of personal jurisdiction over this non-resident defendant.

5. Second, Plaintiffs' purported service of the summons on BONY is ineffective. Plaintiff failed to properly serve BONY in accordance with Miss. R. Civ. P. 4. Further, the purported service was untimely—more than 100 days after the expiration of the 120 day period in which the Plaintiffs were required to serve BONY.

5. Third, Plaintiffs' claims are insufficiently plead under the minimum pleading standards of Federal Rule of Civil Procedure 8. Because there are no factual allegations asserted against BONY, Plaintiffs' Complaint fails to state any claim for which relief may be granted and therefore should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

7. For these reasons, and those set forth in its accompanying Memorandum of Law in Support of its Motion to Dismiss, BONY respectfully requests that the Plaintiffs' Complaint be dismissed in its entirety against BONY, with prejudice.

Respectfully submitted, this the 10th day of February, 2017.

/s/ Erin Saltaformaggio
Erin Saltaformaggio (MBN 103999)
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ATTORNEY FOR BANK OF NEW YORK MELLON

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2017, I have filed a true and correct copy of the foregoing via the Court's ECF filing system, which will provide notice to all ECF participants. A true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, upon the following non-ECF participants:

Shelia R. Holmes
313 Oak Grove Church Road
Pearl, Mississippi 39208

Gloria Jenkins
298 Oak Grove Church Road
Pearl, Mississippi 39208

Pro Se Plaintiffs

/s/ Erin Saltaformaggio
OF COUNSEL